IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 17548 of 2004

Between:

1 Bharat Sanchar Nigam Limited, rep. by its Chief General Manager, A.P.Telecom, Hyderabad.
2 The General Manager, Telecom District, Nellore.

..... PETITIONERS

AND

1 The Asst. Provident Fund Commissioner, EPF Organisation, Sub-Regional Office, Railway Station road, Cuddapah.
2 The Regional Provident Fund Commissioner, Barkathpura, Hyd.
3 The Branchsd Manager, State Bank of India, Barracks Branch, Nellore.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue a Writ of Mandamus or any appropriate writ, or direction, declaring the order No. AP/CP/43205/CDP/ENF/NLR/2004-05/5801, Dt. 10.9.2004, issued by the 1st Respondent herein and the order No. A.P./43205/CDP/INF/MLR/2004/5823, Dt. 14.9.2004 of the 1st respondent directing the 3rd Respondent to remit the amount of Rs. 62,31,789/- laying in the account of petitioner as illegal and void and consequently direct the 1st respondent herein not to collect any amount under the Employees Provident Funds and Miscellaneous Provisions Act 1952.

Counsel for the Petitioner:MR.R.S.MURTHY

Counsel for Respondent Nos.1&2: MR.R.N.REDDY

Counsel for Respondent No.3:MR.K. SRINIVASA MURTHY

The Court, at the stage of admission, made the following :

ORDER

Petitioner, which is a Central Government Organization, was served with a notice dated 16.4.2004 by the Provident Fund Enforcement Officer, Employees' Provident Fund Organization, Nellore region, calling upon to produce the records i.e. the attendance registers, cash books, wages/salaries register, muster rolls register, etc., from May 2001 to March 2004 including annual reports/audited balance sheet for the years from 2001-02 to 2003-04, on the ground that the said information is required in respect of the employees engaged by the contractors of the petitioner organization. Accordingly, the petitioner, by letter, dated 17.8.2004 furnished the names of the contractors together with the details of payments, specifying that the amounts mentioned therein were paid to the contractors on cable works for the relevant years, including the local purchase items like Cuddapah slabs, bricks etc., and maintenance of contractor, which is about 50% of the total price. Along with the same, the petitioner has also enclosed a list disclosing the names of the employees engaged and their contribution towards the provident fund. Thereafter, the first respondent passed the impugned order dated 10.9.2004 under Section 7-A of Employees Provident Funds & Miscellaneous Provisions Act, 1952 (for short 'the Act') calling upon the petitioner to remit an amount of Rs.62,31,789/- as determined by him, within three days. The impugned order also discloses that the petitioner neither appeared nor made any representation for the inquiry held on the dates specified, and as such the Section Supervisor (C&R) has calculated the dues as per the reports of the area Enforcement Officer dated 28.10.2003, 17.8.2004 and 28.8.2004, who presented the case on behalf of the department. After one week thereafter, the first respondent issued a prohibitory order dated 14.9.2004 directing the Branch Manager, State Bank of India, Barracks Branch, Nellore-third respondent herein to remit the amount of Rs.62,31,789/- by way of Demand Draft drawn in favour of the first respondent, which is lying in the account of the petitioner. Pursuant to the prohibitory order, according to the petitioner, the said amount has been

withdrawn by the first respondent.

Learned counsel for the petitioner submitted that the haste manner, in which the first respondent has proceeded to issue the prohibitory order and recovering the amount is totally, non-application of mind. It is also submitted by the learned counsel that though the necessary information, as was required by the Provident Fund Enforcement Officer, Nellore, has been furnished by the petitioner on 17.8.2004, the same has not been taken into consideration nor any further information has been called for, but, simply passed the impugned order.

Sri R.N.Reddy, learned standing counsel for respondents 1 and 2, fairly submitted that the writ petition can be disposed of in the light of the order of this Court in W.P.No.24209 of 2003, dated 3.12.2003.

In similar circumstances, this Court in W.P.No.24209 of 2003, following the law laid down by the Apex Court in **FOOD CORPORATION OF INDIA V PROVIDENT FUND COMMISSIONER** wherein it was held that without summoning and examining the contractor who engaged the employees, so has to determine the liability of the petitioner, the Corporation cannot fix up the liability on the Principal Employer, observed that no such endeavour was made to summon the contractors and examine them before fixing the liability. Accordingly, the said writ petition was allowed setting aside the impugned order thereunder giving liberty to the first respondent therein to summon and examine the contractors, who engaged the contract labour and determine the liability of the petitioner after due notice to the parties.

Following the same, the writ petition is allowed setting aside the impugned order. The first respondent is at liberty to summon and examine the contractors, whose list was furnished by the petitioner on 17.8.2004 and can determine the liability of the petitioner after issuing due notice to the parties. The amount withdrawn pursuant to the prohibitory order, shall be forthwith refunded to the petitioner. No order as to costs.

A. GOPAL REDDY. J.

07th October, 2004

tsr.

To

1 The Asst. Provident Fund Commissioner, EPF Organisation, Sub-Regional Office, Railway Station road, Cuddapah.
2 The Regional Provident Fund Commissioner, Barkathpura, Hyd.
3 The Branchsd Manager, State Bank of India, Barracks Branch, Nellore

4 Two CD copies.